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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1971

No. 71-1031

LEONARD TONASKET, *Appellant*,

v.

THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

SLADE GORTON,
Attorney General of the State of Washington,
Temple of Justice,
Olympia, Washington 98504

TIMOTHY R. MALONE,
Assistant Attorney General,

HENRY W. WAGER,
Assistant Attorney General,
Temple of Justice,
Olympia, Washington 98504

Attorneys for Appellee.

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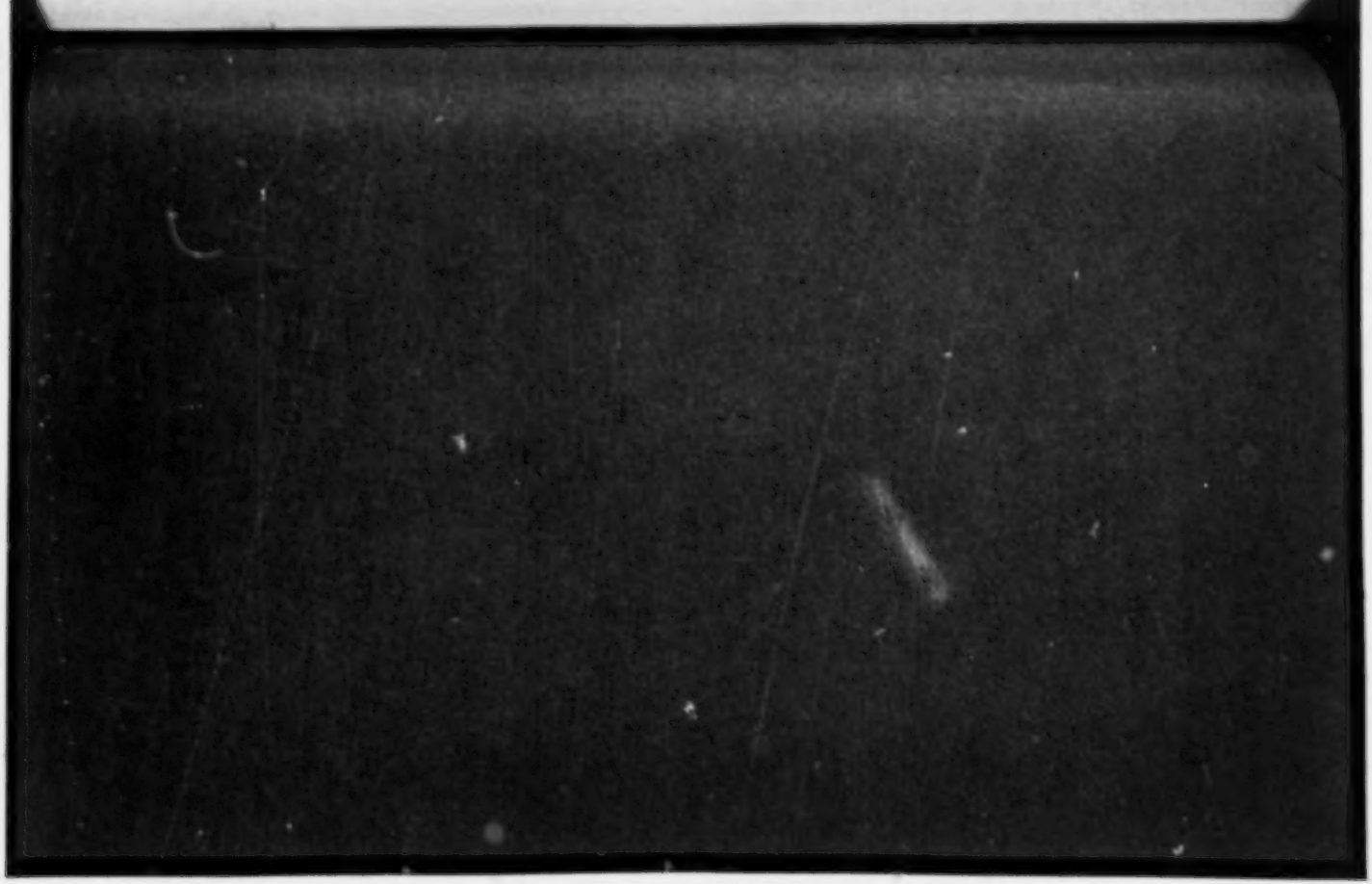

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Assistant Attorney General,
Temple of Justice
Olympia, Washington 98504

Attorneys for Appellee.

Temple of Justice, Olympia, Washington 98504, Telephone: 753-5528
Area Code 206

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Pursuant to Rule 16 of the Rules of the Supreme Court of the United States, the appellees respectfully move that this Court enter an order dismissing the appeal on the ground that this case does not present a substantial federal question.

FACTS

Appellant is a full blood Colville Indian engaged in the business of selling cigarettes on the Colville Indian reservation (R. 23). Pursuant to authority granted by Congress in Public Law 83-

280, 67 Stat. 588) (Jur. St. E. 2), chapter 37.12 Revised Code of Washington, was enacted.

Thereafter, pursuant to the above statutes, the governing body of the Colville Confederated tribes did issue its Resolution 1965-4, requesting the Governor of the State of Washington, on behalf of the State of Washington, to assume full and complete civil and criminal jurisdiction over the Colville Confederated Tribes, its members and the lands held in trust for it and its members. This request was granted in a proclamation issued by the Governor of the State of Washington on January 29, 1965 (R. 23).

In the conduct of his business appellant has operated without the license required by RCW 19-.91.120, has not registered as a taxpayer with the State of Washington as required by RCW 82.32.030 nor paid any excise taxes to the State of Washington. He has not complied with the requirement of chapter 82.24 RCW which imposes upon cigarette retailers the duty of affixing stamps to cigarettes sold (R. 23; Jur. St. A-1).

QUESTION PRESENTED

Have the Colville Confederated Tribes of the State of Washington and its members, by accepting the criminal and civil jurisdiction of the state, authorized by Public Law 83-280, ch. 505, 67 Stat. 588, agreed to be bound by the state excise tax and licensing laws applicable to retailers of cigarettes?

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

The clear, unmistakable language of Public Law 83-280 leaves no room for any conclusion other than that the foregoing question must be answered in the affirmative. The act reads:

> "SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.
>
> "SEC. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof." (67 Stat. 588, 28 U.S.C.A. § 1360 (1964)).

It is perfectly obvious that the foregoing represented a basic policy change by the federal government insofar as state jurisdiction over Indians and

Indian land was concerned. Public Law 83-280 means exactly what it says and expresses congressional intent in unambiguous terms. We quote from the opinion of the Washington State Supreme Court (Jur. St. A-1):

> "In Senate Report No. 699, which repeats in substance House Report No. 848 on House Resolution 1063 (which became Public Law No. 83-280), the following statement regarding the act and certain companion legislation appears:
>
> > "Your Committee on Interior and Insular Affairs, through its Indian Affairs Subcommittee, and with the continuing cooperation of the Secretary of the Interior and the Indian Bureau, has, during this session, operated in five major areas of legislation affecting the Indians. This legislation, whether before the House or presently under committee consideration, has two coordinate aims: First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and second, termination of the subjection of Indians to Federal laws applicable to Indians as such.
>
> U.S.C. Cong. & Admin. News 2409 (1953).
>
> "The report drew attention to the fact that, owing to the lack of state jurisdiction to prosecute offenses and limitations upon the federal jurisdiction, as a practical matter enforcement of law within the reservation had been left largely to the Indian groups themselves, and that Indian tribes often are not sufficiently or-

ganized to preserve law and order on the reservation. The report said:

> "[C]onsequently, there has been created a hiatus in law-enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.

U.S.C. Cong. & Admin. News 2412 (1953).

"Upon the question of civil jurisdiction, the report stated:

> "Similarly, the Indians of several States have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.
>
> "After consideration of the proposed legislation, the committee concluded that: any legislation in this area should be on a general basis, making provision for all affected States to come within its terms; that the attitude of the various States and the Indian groups within those States on the jurisdiction transfer question should be heavily weighed before effecting transfer; and that any recommended legislation

> should retain application of Indian tribal customs and ordinances to civil transactions among the Indians, insofar as these customs or ordinances are not inconsistent with applicable State laws.
>
> U.S.C. Cong. & Admin. News 2412 (1953)."

The basic premise of Public Law 83-280 permits the states to extend their civil and criminal laws, including tax laws, to Indians, with certain exceptions contained in section 2(b) (and in RCW 37.12.060), which have no application to this case.

The state of Washington's implementation of Public Law 83-280 came with the enactment of chapter 37.12 RCW. In discussing the effect of this chapter the court said in *Quinault Tribe of Indians v. Gallagher*, 368 F.2d 648 (1966):

> "It was provided in this act, with exceptions not here relevant, that whenever the governor of the state shall receive from the tribal council or other governing body of any Indian tribe a resolution expressing its desire that its people and lands be subject to the criminal and civil jurisdiction of the state, the governor shall issue a proclamation, after which the state shall assume such jurisdiction. Under this act, state jurisdiction thus extended to Indians and Indian lands was to be exerted *to the same extent as exerted elsewhere in the state.*"
>
> "* * *
>
> 'The scope of chapter 36 [the 1963 act] is summarized in our earlier opinion, opposite note 2. We do not read that act as constituting only a

partial assumption of jurisdiction. The state therein indicates its willingness to extend criminal and civil jurisdiction over all Indians and Indian territory, reservations, country and lands within the state, it being provided, however, that as to some matters concerning some Indians, there must first be a tribal resolution and a gubernatorial proclamation. In chapter 240, Laws of 1957, this Indian resolution and governor's proclamation procedure applied to all exertions of state jurisdiction.' " (pp. 657-8) (Emphasis supplied.)

An Indian subject to the state's jurisdiction is subject to the state's power to tax. "Jurisdiction" is authority to apply the law to the acts of men, *Wedding v. Meyler*, 192 U.S. 573, 48 L. Ed. 570, 24 S. Ct. 322 (1904). There is no limitation on that power, except such as may be expressed in Public Law 83-280 or chapter 37.12 RCW. No limitation is expressed or implied by either statute with respect to state excise taxes as distinguished from property taxes.

Speaking of Public Law 83-280, this Court said in *Organized Village of Kake v. Egan*, 369 U.S. 60, 7 L.Ed.2d 573, 82 S. Ct. 562 (1962):

> "In 1953 Congress granted to several states *full* civil and criminal jurisdiction over Indian reservations, consenting to the assumption of such jurisdiction by any additional States making adequate provision for this in the future * * *. Thus Congress has to a substantial degree opened the doors of reservations to state

> laws, in marked contrast to what prevailed in the time of Chief Justice Marshall." (Emphasis supplied.)

See also *Williams v. Lee*, 358 U.S. 217, 3 L.Ed.2d 251, 79 S. Ct. 269 (1959).

In an effort to bolster his position that a substantial federal question is presented by this appeal, appellant has given to the decision of the Washington State Supreme Court a broad interpretation which is entirely unwarranted by the facts and issue involved. That court correctly stated the single issue as follows:

> "The single question on this appeal is whether the Colville Confederated Tribes of the State of Washington and its members, by accepting the criminal and civil jurisdiction of the state, authorized by Public Law 83-280, ch. 505, 67 Stat. 588, have agreed to be bound by the particular statutes, the terms of which the plaintiff has admittedly violated."

The "particular statutes" referred to are the state's excise tax and licensing laws relating to the retail sale of cigarettes.

1. Appellant urges a substantial federal question on the ground that the state's tax laws may be enforced by levy and sale of real and personal property (Jur. St. 12). There is nothing in the record implying, nor has there been, any effort by the state to enforce collection of any tax against appellant or his property, whether held in trust or otherwise. The

decision of the court went no further than to hold that appellant was subject to the excise taxes in question. Whether certain collection procedures may or may not be used by the state under the authority of Public Law 83-280 is not an issue in this case. A tax may, in any event, be validly imposed and a lien attach, even though the tax cannot be collected or the lien enforced, *United States v. Alabama*, 313 U. S. 274, 85 L. Ed. 1327, 61 S. Ct. 1011 (1941).

2. Appellant seeks to have this Court assume jurisdiction by construing the state court's decision as holding that Public Law 83-280 impliedly repealed the Federal Indian Trader statutes (Jur. St. 12). There is no basis in fact for this assertion.

The effect of the Federal Indian Trader statutes, 25 USC §§ 261, *et seq.*, upon appellant's business activities and the issue relating to the possible repeal of those statutes by Public Law 83-280, were thoroughly presented to the state court (R. 124, 125). The state court simply held that the Indian Trader statutes had nothing to do with the question for decision.

In distinguishing *Warren Trading Post v. Arizona Tax Com.*, 380 U.S. 685, 14 L. Ed.2d 165, 85 S. Ct. 1242 (1965), the Washington Court said:

> "* * * the most important distinguishing feature is that the Navajo Indians of Arizona had not submitted themselves to the

jurisdiction of the state, and the state had not assumed such jurisdiction. The court said:

> "Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities.

380 U.S. at 690.

"* * *

> "And since federal legislation has left the State with no duties or responsibilities respecting the reservation Indians, we cannot believe that Congress intended to leave to the State the privilege of levying this tax.

(Footnote omitted.) 380 U.S. at 691.

> "Implicit in this language is a declaration that, had the Congress placed duties upon the state or authorized it to assume duties with respect to the Indians and had the state assumed such duties, a different result would have been indicated."

3. The appellant poses another question in his effort to sustain jurisdiction (Jur. St. 12). He assumes, without foundation, that the state court has decided Public Law 83-280 makes all state laws, except those expressly excluded, applicable to Indians. Appellant again loses sight of the issue in this case. It is apparent from reading the entire decision that the court was aware it was dealing only with cer-

tain state laws applicable to appellant's business activity of selling cigarettes at retail.

CONCLUSION

The three issues appellant has interjected have no validity, none of them present a substantial federal question in view of the plain, unambiguous terms of Public Law 83-280. The appeal should be dismissed.

Respectfully submitted,

SLADE GORTON,
Attorney General of the State of Washington,
Temple of Justice
Olympia, Washington 98504

TIMOTHY R. MALONE,
Senior Assistant Attorney General,

HENRY W. WAGER,
Assistant Attorney General,
Temple of Justice
Olympia, Washington 98504

Attorneys for Appellees.